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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FUSION VAPE BAR et al.,

Plaintiffs and Respondents,

v.

MONICA PHILOMENA BANKSTON et
al.,

Defendants and Appellants.

B259900

(Los Angeles County
Super. Ct. No. EC062495)

APPEAL from an order of the Superior Court of Los Angeles County, Laura A. Matz, Judge. Affirmed.

LA Superlawyers and William W. Bloch for Defendants and Appellants.

Caryn Brottman Sanders for Plaintiffs and Respondents.

After Donald Sanders (Sanders) and Monica Philomena Bankston (Monica)¹ had been dating for less than a year, they opened the Fusion Vape Bar (Store) in September 2013.² They agreed that Monica would manage the Store's operations and that Sanders would finance the Store. After four months, their relationship soured. A few months later, on April 19, 2014, Monica handed her letter of resignation to Sanders; in response, he threatened her, her family, and her friends by, for example, saying he would hire drug dealers to murder her family. Frightened, she filed an application for a restraining order and a temporary restraining order (TRO) against him on April 22, 2014; the court issued a TRO on the same day and scheduled a hearing on the request for a restraining order. Thereafter, Sanders agreed to cease all threats if Monica agreed to withdraw her application for a restraining order. On April 30, 2014, she asked the court to dissolve the TRO and to dismiss her request for a restraining order; the court granted the requests.

On May 13, 2014, Sanders and the Fusion Vape Bar, Inc. (collectively, Respondents) filed this lawsuit against Monica, her father Euwell Bankston (Euwell), her roommate Samantha Mitchell (Mitchell), and Monica's new boyfriend Lucas Fuller (Fuller) (collectively, Appellants) alleging multiple claims, among them breach of oral contract based on Monica's resignation from working at the Store.

Appellants responded with an anti-SLAPP motion. The motion asserted that the complaint is a "strategic lawsuit against public participation" (SLAPP) because it allegedly arose from protected activity under the anti-SLAPP statute: Appellants' application for a TRO against Sanders.

¹ We refer to Monica Bankston and Euwell Bankston by their first names for the sake of clarity, intending no disrespect.

² Vape or vaping refers to inhaling vapor from an electronic cigarette or vaporizer that heats a liquid normally infused with nicotine and scented; this process allows users to inhale doses of nicotine through a vaporized solution absent the tar found in traditional cigarettes.

Determining that the claims did not arise from protected activities under the anti-SLAPP statute but rather from unprotected activities including Monica's resignation from the Store, the trial court denied the motion.

We affirm the trial court's denial of Appellants' anti-SLAPP motion.

BACKGROUND

I. Facts of the case

As Respondents and Appellants dispute the relevant events, we describe each side's respective factual allegations below.

A. *Appellants' allegations*

In October 2012, Sanders and Monica began dating. Monica commented to Sanders that the vape store she frequented received a substantial amount of business; he suggested that they open a vape store together. In September 2013, they opened the Store in North Hollywood. Almost immediately, disputes arose between Sanders and Monica; during these arguments, Sanders became orally abusive and threatened that he could influence drug dealers to harm Monica and that he could fire her from the Store.

Frightened, Monica asked her father Euwell to intercede on her behalf with Sanders. In October 2013, Euwell initiated several conversations with Sanders in an unsuccessful attempt to mediate the disputes between the two. By this point, Monica had been "working sometimes 65 hours a week at the shop and doing full time school."

By the end of January 2014, Monica had ended her personal relationship with Sanders; however, she continued to work at the Store. At work, Sanders repeatedly harassed her by, for example, pressuring her to date him again or to have casual sex with him; when she rejected his demands, he "would fly off the handle and yell and threaten [Monica.]" In late January or early February 2014, Euwell accompanied Monica to the Store and informed Sanders that his daughter would no longer work at the Store. In subsequent days, Sanders again threatened her that he would contact drug dealers to harm her. Frightened by his threats, Monica agreed to continue working at the Store.

On April 19, 2014, after enduring two more months of Sanders's threats and working full time but receiving no pay, Monica gave Sanders her letter of resignation.

Although he owed her \$6,500 in unpaid wages and she had a 10 percent ownership in the Store, she agreed to waive her rights to both the back wages and the stock in order to sever all ties with him and the Store.

In response to Monica's resignation, Sanders escalated the threats against her. He threatened to ask his friends in law enforcement to arrest her, to submit to the IRS a false 1099 form attesting that she had received a high income from the Store, and to file a lawsuit against her. He also threatened to hire drug dealers to kill her family and gang rape her. After Sanders "started sending a raft of text messages and repeatedly calling" Monica, Euwell confiscated Monica's phone in order that Euwell could act as an intermediary between the two. On April 21, 2014, Sanders informed Monica that he had contacted the police and that he had accused Euwell of insurance fraud. Euwell's insurance provider subsequently notified him that, after receiving an accusation that Euwell had committed insurance fraud, it had opened an investigation into these allegations.

On April 22, 2014, at Euwell's recommendation, Monica filed an application for a restraining order and a TRO to protect herself, her roommate Mitchell, and Monica's family including Euwell. The court scheduled a hearing on the request for a restraining order and issued a TRO protecting Monica, Euwell, Mitchell, and Monica's mother, sister, grandmother, brother-in-law, and friend C.W.; the TRO would expire at the time of the hearing on the restraining order. The TRO also ordered Sanders not to "[h]arass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements" of the protected persons or "[c]ontact, either directly or indirectly, in any way, including but not limited to, by telephone, mail, e-mail or other electronic means" the protected persons. A process server served Sanders with the TRO that same day; Sanders subsequently harassed Monica in violation of the TRO by posting on the Store's Instagram account a photograph of Monica with a caption that accused her of prostitution.

The next morning, April 23, 2014, Euwell received a call from Sanders's wife, who is also Sanders's attorney, seeking to resolve the disputes between Sanders and

Monica. On April 29, 2014, Monica, Euwell, Sanders, and Sanders's wife met at a restaurant where Monica and Sanders signed an agreement (Agreement) requiring that Sanders not file false 1099 forms regarding her income, that he not contact Monica or her family, and that he not cause any third party to contact her or her family on his behalf. The Agreement also required the following: Monica would withdraw her application for a restraining order; while her letter of resignation would remain in effect, she would continue to work at the Store until May 26, 2014 for which work she would be paid an hourly wage.

On April 30, 2014, Monica filed a request with the court seeking dissolution of the TRO. In May 2014, Monica began working at the Store; in breach of the Agreement, Sanders resumed his harassment of Monica and still failed to pay her for time worked.

Mitchell lived with Monica at Euwell's residence. In July 2013, when Mitchell needed funds to repair her car, Sanders offered to provide the money; at the time, Mitchell and Sanders did not discuss whether these funds were a loan or a gift. Notably, Mitchell never entered into any contract with Sanders to repay the funds and Monica never agreed to guarantee repayment of the funds to Sanders.

Fuller and Monica began dating in March 2014. In reaction to Sanders's threats against Monica, Fuller encouraged her to resign from the Store; he also discussed with her the advisability of obtaining a restraining order against Sanders. Sanders subsequently contacted Fuller in an unsuccessful effort to convince him to stop dating Monica.

B. Respondents' allegations

Sanders and Monica began dating in October 2012; in May 2013, Monica suggested that Sanders open a vape store for her. Monica represented to Sanders that she had conducted extensive research on opening a vape store, that she wanted to own her own business, that she knew many celebrities who would promote the Store, and that she would manage the Store; Sanders's only responsibility would be to provide the start-up capital. After discussing the large time commitment required to open a store, Monica promised Sanders that she would work at the store regardless of the hours needed and for

the life of the Store. Monica understood that initially “the only persons working at the store would be [Sanders] and Monica” and that initially because the store would have no business she would not receive a salary.

Sanders provided funds for the lease deposit, utilities deposits, merchandise, furnishings, and renovations for the Store. A third party also loaned \$15,000 to Monica and Sanders to facilitate the Store’s opening.

After the Store’s opening on September 14, 2013, Monica and Sanders worked at the Store “every day from open until closing, seven days a week.” Soon thereafter, when Sanders realized that Monica “was not aware of how to do banking, of tax requirements, and lacked general business knowledge,” he stopped working at his construction company to teach her how to run the business. He also observed that Monica spent most of her time at the Store studying for school rather than performing Store-related tasks. On September 27, 2013, Monica ended her personal relationship with Sanders, but she agreed to continue managing the Store. By that time, Sanders had committed over \$50,000 to the Store’s operations.

In December 2013, Sanders loaned Monica’s roommate Mitchell \$1,200 to pay for her car repairs. Monica guaranteed repayment to him should Mitchell fail to pay back the loan in full to Sanders.

After Sanders had invested over \$100,000 in the Store by December 31, 2013, he discussed with Monica the need to close the Store because it was not profitable. Wanting to keep the Store open, she promised to expend more effort in managing the Store. Sanders subsequently withdrew all the funds from his daughter’s stock account and the last of his cash reserves and invested the sum (approximately \$45,000 total) in the Store.

On January 7, 2014, Monica’s father Euwell informed Sanders that he disapproved of Sanders’s relationship with Monica. That same month, Monica advised Sanders that her father wanted her to spend less time at the Store and that they should hire employees to facilitate that goal. After hiring a new employee in February, Sanders paid the new employee’s salary from his personal funds rather than the Store’s revenue.

On March 19, 2014, after a Store customer offered to provide a loan to keep the Store open, Sanders cautioned Monica that because the customer would require Sanders to provide a personal guarantee on the loan and the customer would take the Store's inventory as collateral for the money borrowed, they should not accept the loan unless Monica would make a "major effort and commitment" to the Store. After Monica agreed to make a long-term commitment to the Store, Sanders and Monica accepted the loan the next day.

By April 1, 2014, Sanders had invested \$250,000 in the Store. On April 18, 2014, Sanders and Monica began the application process for a permit from the police to expand evening activities at the Store; as a prerequisite to obtaining the permit, they had their "fingerprints taken."

The next day, on April 19, 2014, Monica and Euwell went together to the Store and Monica informed Sanders that she would no longer work at the Store. She gave Sanders her Store key, the Store's debit card, and a resignation letter. Sanders attempted to convince Monica to continue working at the Store by calling her telephone repeatedly after she and Euwell exited the Store and requesting that she return to the Store "so [they] could discuss what was happening" but Monica did not comply with his request and stopped answering her telephone. In a subsequent telephone conversation between Euwell and Sanders, Euwell stated his disapproval of the relationship between Sanders and his daughter and notified Sanders that he had convinced her to stop working at the Store.

On April 21, 2014, Sanders reminded Monica that he had made a large financial investment in the Store in reliance on her representations to him. Monica responded that employees only needed to provide two weeks' notice to resign; Sanders countered that she was a shareholder of the Store, not a regular employee, and therefore two weeks' notice would not be sufficient time. They agreed that she would work for a few more weeks to assist him in finding a replacement for her.

On April 22, 2014, the next day, a process server served Sanders with the TRO; Monica subsequently revealed to Sanders that Euwell had encouraged her to obtain the

TRO. On April 29, 2014, Monica, Euwell, and Sanders met and agreed that Monica would ask the court to dissolve the TRO and that Monica would continue working at the Store “under certain conditions,” including that Sanders not be present at the Store when Monica was there.

On May 2, 2014, Monica resumed working at the Store. She informed Sanders that Euwell had filled out parts of the application for the TRO and that Euwell had forbidden her to speak with Sanders. Monica also divulged that her new boyfriend had complained about her employment at the Store. When Monica did not object to Sanders’s presence at the Store while she was working there, a circumstance expressly prohibited by the Agreement, Sanders concluded that she did not intend to enforce the Agreement; thus, he continued to work at the Store at the same times as Monica. On May 13, 2014, Sanders filed this action against Monica, her family, and her friends. The next day, Monica again notified Sanders that she would no longer work at the Store.

Sanders received no income from the Store. Contrary to her representations prior to the opening of the Store, Monica never provided any industry connections to promote the Store. In fact, on an unknown date, she convinced a supplier to stop doing business with the Store.

II. Procedural history

On May 13, 2014, Respondents filed a complaint against Appellants, asserting claims for breach of contract, slander, libel, intentional misrepresentation, intentional interference with contractual relations, and intentional interference with prospective advantage. On May 21, 2014, Respondents added Fuller to the complaint as a Doe defendant. On June 30, 2014, Respondents dismissed without prejudice the claim for slander and the claim for libel.

On July 10, 2014, Appellants filed an anti-SLAPP motion to strike the complaint on the ground that Respondents had filed their complaint because Monica had applied for a TRO against Sanders and because Mitchell, Euwell, and Fuller had encouraged her to obtain the TRO. Since the anti-SLAPP statute explicitly identifies petitioning the judiciary as a protected act, Appellants contended that Respondents’ complaint arose

from protected activity and that therefore the court should grant their motion to strike the complaint.

On August 29, 2014, in their opposition to the anti-SLAPP motion, Respondents alleged that the complaint arose from Monica's resignation, Mitchell's car loan default, and Euwell and Fuller's encouraging Monica to stop working at the Store. Respondents further alleged that the foregoing conduct was not protected activity under the anti-SLAPP statute. Respondents asserted that even if Monica had not filed her application for a TRO, she still would have resigned from the Store. Contending that Monica's TRO application was incidental to the unprotected activity by Appellants alleged in the complaint, Respondents asserted that their complaint was not subject to the motion to strike.

On September 5, 2014, Appellants filed a reply in support of their motion to strike.

Concluding that none of the claims arose from protected activity, the trial court denied the anti-SLAPP motion. As to the breach of contract claims and the intentional misrepresentation claim, the trial court focused on the injuries alleged by Respondents in their complaint and concluded that those injuries flowed from unprotected conduct by Appellants (for example, Monica's resignation)—not Monica's TRO application. As to the intentional inference with prospective economic advantage claim, the trial court found that Appellants' alleged actions in interfering with Sanders's potential future economic opportunities in the construction industry (for instance, conspiring to end the relationship between Monica and Sanders and therefore causing Sanders to deplete funds and to expend time that he would have otherwise utilized to obtain business projects for his construction company) were independent of Monica's TRO application. As to the intentional interference with contractual relations claim, the trial court determined that the focus of the claim was unprotected conduct by Appellants (for example, Euwell's interference with the relationship between Monica and Sanders) and therefore Monica's TRO application was incidental to Appellants' unprotected conduct.

DISCUSSION

I. Statutory background

The anti-SLAPP statute provides a method for early dismissal of meritless lawsuits intended ““to chill or punish a party’s exercise of the constitutional rights to free speech and to petition the government for redress of grievances.”” (*Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 447.)

Code of Civil Procedure section 425.16, subdivision (b)(1), sets forth the two-prong analysis of an anti-SLAPP motion: “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike [prong one], unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim [prong two].”³ We review de novo a trial court’s ruling on an anti-SLAPP motion. (*Mundy v. Lenc* (2012) 203 Cal.App.4th 1401, 1408.)

Our analysis focuses on prong one: Appellants have the burden to show that Respondents’ claims arise from an act by Appellants in furtherance of their constitutionally protected right of petition or free speech in connection with a public issue. (§ 425.16, subd. (b).) Appellants can meet this burden by demonstrating that the act or acts underlying Respondents’ claims fall under one of the categories delineated in section 425.16, subdivision (e). As relevant here, subdivision (e) provides that “any written or oral statement or writing made before a . . . judicial proceeding” or “any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body” is constitutionally protected. (§ 425.16, subd. (e).)

“In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).)

³ All further statutory references are to the Code of Civil Procedure.

II. Parties' contentions on appeal

Appellants contend that Respondents' complaint arose from Monica's conduct in filing an application for a TRO against Sanders as well as Euwell and Fuller's conduct in encouraging her to obtain the TRO. According to Appellants, such conduct constitutes a "written or oral statement or writing made before a . . . judicial proceeding" or a "written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body" under subdivision (e) of the anti-SLAPP statute, thus satisfying prong one. Appellants assert that although some of the causes of action of the complaint failed to allege *expressly* conduct pertaining to the TRO application, those causes of action nevertheless *incorporated by reference* TRO-related allegations.

Respondents counter that their complaint arose from Monica's termination of employment at the Store, Mitchell's car loan default, and Euwell and Fuller's interference with Monica's contractual obligations to Sanders and the Store—none are constitutionally protected activities. Respondents assert that regardless of whether Monica applied for a TRO, Appellants' actions and the subsequent filing of the complaint would have occurred anyway. Respondents further assert that although the complaint mentioned in certain sections that Monica applied for a TRO, those factual allegations underlay only claim 3 (slander) and claim 4 (libel)—claims which Respondents have dismissed from this case. Thus, Respondents argue that the complaint's over-inclusion of facts supporting subsequently-dismissed claims is not a proper basis for an anti-SLAPP motion against the remaining claims.

III. Respondents' claims do not arise from protected activity under the anti-SLAPP statute.

Where a claim arises from both protected and unprotected activity, if the protected conduct is "merely incidental" to the unprotected conduct then the anti-SLAPP statute does not apply under prong one. (*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 967–968.) We proceed now to analyze each of the remaining claims of the complaint to determine whether Appellants' protected conduct alleged therein, applying for a TRO, is "merely incidental" to Appellants' unprotected conduct alleged in the claims.

A. *Claims 1 and 2 asserting breach of contract do not arise from protected activity.*

Claims 1 and 2 assert breach of an oral contract. The elements of a breach of an oral contract are the same as those for a breach of a written contract: a contract, the plaintiff's performance or excuse for nonperformance, the defendant's breach, and damages to the plaintiff resulting therefrom. (*Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 453.)

1. Claim 1

Claim 1 of the complaint alleges that Monica and Sanders entered into an oral contract for Monica to “stay at the store, manage the store, and remain a stockholder and corporate officer at the store” and for Sanders's financial investment in the Store. Sanders alleges that he satisfied his performance under the contract: (1) he “personally invested over \$100,000 to get open and keep open the store”; (2) by the end of 2013 he “invested another \$50,000 in Fusion to keep the store operating”; and (3) he subsequently “invested an additional \$150,000 through April 1, 2014.” The complaint alleges that Monica breached the contract when “[o]n April 19, 2014, Monica abandoned Fusion and [Sanders]” by informing Sanders that she would no longer work at the Store and handing him a resignation letter. The alleged damages are Sanders's financial investment in the Store, the cost to hire new personnel to replace Monica at the Store, and “the extra money Monica is demanding beyond the original agreement.”

The trial court appropriately explained that the harm alleged by Respondents, for example, Sanders's lost investment in the Store, flowed from the alleged breach of contract that occurred when Monica allegedly neglected to satisfy her promise to manage the Store and resigned, not from her filing of a TRO application.

In addition, contrary to Appellants' contentions on appeal, Monica's resignation occurred independently of Monica's application for the TRO. Notably, Monica's initial resignation, i.e., her ostensible “abandonment” of the Store on April 19, occurred before she applied for the TRO on April 22; thus her decision to end her employment at the Store occurred before she filed the application for the TRO. Even after the court

subsequently vacated the TRO, Monica ultimately resigned her position at the Store. Thus, based on the alleged facts, it appears Monica's decisions to resign were independent of, and not affected by, the TRO process.

Appellants appear to assert on appeal that the court's issuance of the TRO legally approved Monica's breach of the contract; however, the court's issuance of a TRO had no such effect. Monica's obtaining a TRO to protect herself from a threatening person is not a legal bar to her potential civil liability for monetary damages as a consequence of her alleged breach of the employment-related business contract in this case. We therefore reject this argument raised by Appellants.

Appellants contend that the complaint contained factual allegations that Sanders could not contact Monica in light of the TRO and argue that the TRO allegedly prevented Monica from resuming employment at the Store and therefore the TRO prevented Monica from complying with the contract at issue. However, the TRO imposed no corresponding restriction on *Monica's* actions; it was Monica who allegedly breached the contract by resigning. She could still manage operations at the Store while the TRO enjoined Sanders from approaching the workplace. Thus, this argument raised by Appellants also has no merit.

For all of the foregoing reasons, we conclude that Monica's TRO application was merely incidental to her actions that are the focus of claim 1; claim 1 did not arise from protected activity under the anti-SLAPP statute.

2. Claim 2

Claim 2 of the complaint alleges that Sanders, Mitchell, and Monica entered into a contract for a loan from Sanders to Mitchell with Monica guaranteeing that loan. Sanders alleges as follows: (1) he performed the contract when he loaned Mitchell \$1,200 to repair her car; (2) after Mitchell paid him \$100, the \$1,100 balance remains outstanding.

The trial court appropriately concluded that the injury alleged by Respondents is the unpaid \$1,100 and that the injury flows from Mitchell and Monica's alleged failure to repay the loan, not Monica's TRO application. Appellants argue that the complaint contained factual allegations that Sanders could not pursue his rights under the contract

because the TRO prohibited him from communicating with Mitchell or Monica in order to collect the money owed. This contention is misguided. The breach of contract was Mitchell and Monica's alleged failure to repay the loan, not Sanders's inability to collect on the loan. Indeed, the chronology of events leading up to the filing of the complaint support a conclusion that this cause of action arose from the alleged failure to repay the loan, not filing an application for the TRO: when Respondents filed this complaint, the TRO was no longer in place yet Mitchell and Monica have still refused to pay Sanders the \$1,100. For the foregoing reasons, Monica's obtaining the TRO was merely incidental to Mitchell's and Monica's unprotected alleged conduct.

B. Claim 5 asserting intentional misrepresentation does not arise from protected activity.

Claim 5 alleges intentional misrepresentation by Monica. The elements of intentional misrepresentation are as follows: “(1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damages.” (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.)

The section in the complaint discussing claim 5 contains no direct mention of the TRO. Rather, the complaint alleges that Monica “represented that she had extensive conversations” with a third party who “gave her extensive information with regard to opening a vaping establishment.” It further alleges that Monica “represented that she had visited other stores, spoke with other personnel at vaping stores and had acquired special knowledge of the products to sell in a vaping store,” that she represented that “she was well aware of the hours, days, weeks, and months it would take to establish the business to profitability,” and that she represented that she “would continue to remain a worker, officer, and shareholder at Fusion.” The complaint further alleges that Monica “made such representations falsely and intentionally to induce [Sanders] to pay for the store, provide money to Monica and continue to put more money into the store so Monica would be supported in a workplace where she could spend her entire day doing school work while sitting on [a] couch in the store.” Alleging that Sanders relied on Monica's

representations, Respondents seek as damages the funds Sanders invested in the Store based on that reliance.

All of the alleged representations by Monica, which are the primary focus of claim 5, occurred before she applied for the TRO; similarly, the alleged reliance by Sanders in investing in the Store and the alleged resulting injury in monetary damages occurred before Monica filed the application for the TRO. Therefore, we conclude that this cause of action did not arise from protected activity under the anti-SLAPP statute.

C. Claim 6 asserting intentional interference with contractual relations does not arise from protected activity.

Claim 6 alleges intentional interference with contractual relations based on three alleged contracts: the oral contract between Monica and Sanders, a contract between the Store and its supplier, and the oral contract among Mitchell, Monica, and Sanders. The elements for intentional interference with contractual relations are the following: “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damages.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.)

As discussed below, with regard to the three contracts that are the focus of claim 6, the cause of action did not arise from protected conduct under the anti-SLAPP statute.

1. Contract 1: contract between Monica and Sanders

Claim 6 alleges that Appellants intentionally interfered with the same contract that formed the basis of claim 1: the contract between Monica and Sanders which required Monica to manage the Store’s operations and Sanders to finance the Store. The complaint alleges that on January 7, 2014, Euwell “relayed his displeasure with the relationship [or] any involvement between [Sanders] and Monica. From this point on, the relationship started having issues” The complaint asserts that “each of these blow ups [between Sanders and Monica] were engineered by Euwell,” that Euwell “insist[ed]

that Monica end the relationship both personal and business with [Sanders],” and that “[b]ut for Euwell’s intentional interference with the contractual relationship between [sic] [Sanders], Monica, and Fusion, Monica would not have had reason to blindside [Sanders] and Fusion and abruptly cut all ties and file a malicious and false restraining order”

Based on the allegations in the complaint, the alleged intentional interference was Euwell’s encouraging Monica to end her employment at the Store; that conduct did not constitute protected activity under the anti-SLAPP statute. Emphasizing that the complaint mentioned Euwell’s actions in encouraging Monica to file an application for a TRO, Appellants point to that specific encouragement by Euwell as the alleged intentional interference that formed the basis of this cause of action. However, the alleged interference must be connected to the alleged contract interfered with; in this case, the contract at issue stemmed from Monica’s promises to manage operations at the Store, not any contractual obligation related to the TRO. Monica could have managed the Store operations while the TRO was in place; thus, Euwell’s encouraging Monica to file an application for a TRO did not preclude Monica’s performance under the contract. Put another way, as explained in the discussion on claim 1, Monica’s alleged actions in filing an application for a TRO were merely incidental to her alleged actions in ending her employment at the Store; correspondingly, Euwell’s alleged encouragement of the protected conduct (filing the application for a TRO) was merely incidental to his alleged direct encouragement of Monica to terminate her employment at the Store.

2. Contract 2: contract between the Store and its supplier

Claim 6 also alleges that Appellants intentionally interfered with a contractual business relationship between the Store and its supplier. Claim 6 asserts that Monica communicated with the supplier “in such a manner as to cause the business relationship” between the Store and the supplier “to come to an abrupt end, which coincided with the false and baseless restraining order.” The claim further alleges that Monica “was able to stir enough innuendo to end the profitable and successful sale of [the supplier’s] products by Fusion.”

Based on the allegations in the complaint, the alleged intentional interference was Monica's communications with the supplier; that conduct did not constitute protected activity under the anti-SLAPP statute. Critically, the complaint did not assert that the TRO ended the business relationship between the Store and the supplier. Rather, the complaint only alleged that the two events occurred around the same time. Monica's action in filing an application for the TRO was therefore merely incidental to her alleged terminating communications with the supplier.

3. Contract 3: contract among Mitchell, Monica, and Sanders

The third contract underlying claim 6 is the oral contract among Mitchell, Monica, and Sanders related to the \$1,200 car loan discussed above concerning claim 2. The complaint alleges that Euwell and Monica "prevented [Sanders], who would regularly visit the apartment shared by Euwell, Monica and [Mitchell], from having contact with [Mitchell]." The allegations continue that Mitchell "refuse[d] to answer text messages from [Sanders], phone calls from [Sanders], and ha[d] been isolated by Monica and Euwell such that they [were] intentionally interfering with [Sanders]'s ability to collect the monies owed by [Mitchell] to [Sanders]."

Based on the allegations in the complaint, the alleged intentional interference was Monica's and Euwell's encouraging Mitchell not to contact Sanders. Consistent with the analysis of claim 2, the TRO prevented only Sanders from contacting Mitchell; if Mitchell indeed owed Sanders a repayment of the loan, then she could have paid that loan regardless of whether Monica and Euwell obtained a TRO prohibiting Sanders from contacting her. Thus, Monica's and Euwell's alleged encouragement of Mitchell not to contact Sanders was conduct separate and distinct from obtaining the TRO.

D. Claim 7 asserting intentional interference with prospective advantage does not arise from protected activity.

Claim 7 alleges intentional interference with prospective advantage by Monica and Euwell. The elements for intentional interference with prospective economic advantage are "(1) an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) defendant's knowledge of the relationship;

(3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act." (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 944.)

Respondents' complaint asserts four economic relationships with which Appellants allegedly intentionally interfered: the relationship between Sanders and the customers of his construction company; the relationship between Monica and Sanders; the relationship between Monica and the Store; and the relationship between the Store and its suppliers.

As with claim 5, claim 7 makes no direct mention of the TRO. While this section of claim 7 incorporates by reference other paragraphs in the complaint, the expressly-mentioned factual allegation that comprises the alleged intentional interference is as follows: Monica and Euwell "have made it costly in both time and money to pursue construction work by [Sanders], because of the sudden and unexpected departure of Monica, [thus] severely impacting Fusion and creating economic trouble at Fusion."

Like the prior claims, this cause of action arose from Monica's termination of her employment at the Store and Euwell's encouragement of that termination; neither action constituted protected conduct under the anti-SLAPP statute. Further, the absence of any direct mention of the TRO as a source of injury for the alleged intentional interference further supports a determination that Monica's filing an application for the TRO was merely incidental to the unprotected conduct of Appellants.

E. The causes of action against Fuller do not arise from protected activity.

Appellants assert on appeal that the complaint contained no allegations identifying Fuller by name; however, this argument concerns the merits of Respondents' causes of action, not whether the anti-SLAPP statute applies here. Moreover, the complaint alleged causes of actions against DOE defendants; Respondents subsequently added Fuller as a DOE defendant. For example, the complaint asserted claims 6 and 7 against Does 1-20. Claim 6 alleged that Does 1-20 intentionally interfered with the contractual relationship between Monica and the Store and that Does 1-20 intentionally interfered with the

contractual relationship between Monica and Sanders; similarly, claim 7 alleged that Does 1-20 intentionally interfered with the prospective advantage regarding the relationship between Monica and the Store and that Does 1-20 intentionally interfered with the prospective advantage regarding the relationship between Monica and Sanders. Consistent with those factual allegations concerning Does 1-20, Respondents alleged (in their affidavits accompanying their opposition to Appellants' anti-SLAPP motion) that Fuller encouraged Monica to resign from working at the Store. (See § 425.16, subd. (b)(2) [court shall consider supporting and opposing affidavits].) Thus, the causes of action against Fuller did not arise from protected conduct under the anti-SLAPP statute.

IV. Conclusion

Our decision does not address the merits of the claims of the complaint but merely holds that the anti-SLAPP statute does not preclude Respondents' lawsuit from proceeding beyond this initial stage.

DISPOSITION

The order is affirmed. Costs are awarded to Fusion Vape Bar, Inc. and Donald Sanders.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.